



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

August 25, 2008

Mr. Robert Brager
Public Works Director
City of Malibu
23815 Stuart Ranch Road
Malibu, CA 90265

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7007 2560 0001 7888 9141

**COMPLAINT NO. R4-2008-0041 FOR ADMINISTRATIVE CIVIL LIABILITY
FOR THE CITY OF MALIBU, SOLSTICE CANYON CREEK BRIDGE REPLACEMENT
PROJECT, 26023.5 PACIFIC COAST HIGHWAY, MALIBU, CA.**

Dear Mr. Brager:

Enclosed is Complaint No. R4-2008-0041 for Administrative Civil Liability in the amount of \$53,750 against the City of Malibu for violation of waste discharge requirements contained in Order No. 2003-0017-DWQ. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider Administrative Civil Liability Complaint.

Unless waived, a hearing before a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0041 and return it to the Regional Board by 5:00 pm on September 23, 2008. If we do not receive the waiver form and full payment of the mandatory minimum penalty by September 23, 2008, this matter will be heard before the Regional Board or Hearing Panel. A notice containing the date, time, location, and specific procedures of the hearing will be mailed to you prior to the hearing date.

If you have questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Ms. Mercedes Merino at (213) 620-6369.

Sincerely,

Deborah J. Smith
Chief Deputy Executive Officer

Enclosure
cc: See mailing list

California Environmental Protection Agency



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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

MAILING LIST

Jeff Ogata, Office of Chief Counsel, State Water Resources Control Board
Bill Orme, State Water Resources Control Board, Division of Water Quality
Neil Manji, Chief, Fisheries Branch, California Department of Fish and Game
Kenneth Wong, U.S. Army Corps of Engineers, Regulatory Branch, Los Angeles District
Jamie Jackson, California Department of Fish and Game, South Coast Region-Region Five
Tom Ford, Santa Monica Baykeeper
Mark Gold, Heal the Bay



**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Complaint No. R4-2008-0041
)	Administrative Civil Liability
City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project)	Pursuant to California Water Code §13350(a)(2)
26023.5 Pacific Coast Highway)	For Violations of
Malibu, CA)	Order No. 2003-0017-DWQ

THE CITY OF MALIBU IS HEREBY GIVEN NOTICE THAT:

1. The City of Malibu (hereinafter Permittee) is building the Solstice Canyon Creek Bridge Replacement Project (Project), located on Corral Canyon Road at 26023.5 Pacific Coast Highway in Malibu, California. Solstice Canyon Creek flows from north to south under Corral Canyon Road via a box culvert with a reinforced concrete bottom. The Project consists of removal of the existing box culvert under Corral Canyon Road and replacing it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Canyon Creek and of grading about 300 feet of the stream channel. The culvert is located approximately 0.25 miles upstream of the Pacific Ocean.
2. Based on the Regional Board staff inspection of the City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in illegal discharges to waters of the State for which the Regional Water Quality Control Board (Regional Board) may impose administrative civil liability under section 13350 of the California Water Code (CWC).

BACKGROUND

3. On June 14, 2005, the State Water Resources Control Board issued Order No. 2003-0017-DWQ for Conditional Water Quality Certification (401 Water Quality Certification) to the Department of Fish and Game (F&G) for one hundred and eleven restoration projects funded by F&G grants, including the Project at Solstice Canyon Creek. The purpose of the restoration projects are to improve watershed conditions for anadromous fish.
4. On September 6, 2006, the Permittee made applications to various local, state and federal agencies to construct the Corral Canyon Road Bridge Project. The Permittee proposed to remove the existing box culvert under Corral Canyon Road and replace it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Creek.

August 25, 2008

5. On December 14, 2006, F&G issued Streambed Alteration Agreement Number 1600-2006-0361-R5 to Ms. Shelah Riggs, consultant for the City of Malibu, for the Solstice Creek Project.
6. On May 25, 2007, the United States Army Corps of Engineers determined that the project as described was subject to its jurisdiction under Section 404 of the Clean Water Act due to the temporary impact of approximately 0.14 acres of waters of the United States, including wetlands, as a result of replacing the Corral Canyon Bridge over Solstice Creek in Malibu, California.
7. The City of Malibu received permission from the United States Army Corps of Engineers (Corps) to install a diversion in the channel on May 15, 2007 across the entire width of the channel. The diversion was constructed along the entire 260 foot width of the channel, on both the north side and the south side of the proposed Solstice Canyon Creek Bridge Replacement Project in early February 2008. The City of Malibu controls the water level behind the diversion by pumping water around the construction project and discharging it downstream of the diversion structures.

ALLEGED VIOLATIONS

8. On January 25, 2008, after a rain event, Regional Board staff received complaints from the public regarding discharge of spoil piles from the excavation of bridge footers to the creek. Regional Board staff conducted an inspection of the Site on January 25, 2008 and observed spoil piles located on the stream bank and in the creek bed. The rain event had led to erosion and discharge of significant portions of the spoil piles into waters of the State.
9. During the January 25, 2008 inspection, Regional Board staff also noted that there was active erosion along the unprotected stream banks and slopes throughout the Solstice Creek Bridge Replacement Project site (Site).
10. Improper placement of spoil and fill material in Solstice Canyon Creek resulted in major discharge of sediments into the Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events.
11. Erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in discharges to waters of the State. The City failed to implement the requirements prescribed in their 401 Certification permit.
12. On March 10, 2008, Regional Board staff contacted Mr. Granville Bowman, City of Malibu, to inform the City of the violations. Mr. Bowman stated that the City was aware of the spoil piles being stock piled in the creek and that some of the material had washed downstream.
13. On March 11, 2008, Mr. Richard Calvin, City of Malibu, contacted Regional Board staff to inform the Regional Board that the spoil piles had been removed from the creek.
14. The creation of conditions of pollution or nuisance in any waterbody and its subsequent discharge are violations of California Water Code section 13350. The discharges were not a

result of natural phenomenon of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight.

SOURCES OF INFORMATION

15. The facts set forth above were obtained from the following sources:
 - a. Regional Board staff inspection on January 25, 2008.
 - b. Regional Board staff inspection report and photographs taken January 25, 2008.
 - c. Regional Board staff inspection on March 6, 2008 and photographs taken that day.
 - d. Regional Board Record of Communication dated March 10, 2008.
 - e. Regional Board Record of Communication dated March 11, 2008.
 - f. Regional Board staff inspection on March 21, 2008.

IMPACTS TO THE WATERS OF THE STATE

16. As set forth in the alleged violations above, the Permittee and/or its contractors, agents, and employees improperly placed spoil piles and fill material in Solstice Canyon Creek, a water of the State, which resulted in major discharge of sediments into Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events.
17. Further, erosion control and drainage practices employed by the Permittee and/or its contractors, agents, and employees during the construction activities at this Site were inadequate and resulted in discharges to Solstice Canyon Creek, a water of the State, and impacted water quality and beneficial uses.

CONCLUSION

18. Based on the Regional Board staff inspection of the City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at this Site were inadequate and resulted in illegal discharges to waters of the State for 45 days between January 25, 2008 to March 10, 2008, for which the Regional Water Quality Control Board (Regional Board) may impose administrative civil liability under section 13350 of the California Water Code.
19. The unauthorized discharge of wastes by the Permittee was not permitted and is in violation of water quality objectives established in the *Water Quality Control Plan for the Los Angeles Region* and applicable State and Federal Water Quality Standards. The Permittee's activities have impacted Solstice Creek.

POTENTIAL CIVIL LIABILITY

20. Section 13350(a)(2) of the CWC states that "(a) Any person who...(2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."

21. Pursuant to California Water Code section 13350(e), civil liability may be administratively imposed by a Regional Board in accordance with California Water Code section 13323 et seq. in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs or ten dollars (\$10) for each gallon of waste discharged, but not both.

The total maximum civil liability authorized by the California Water Code for violation of the requirements contained in Order No. 2003-0017-DWQ is:

POTENTIAL MAXIMUM PENALTY

Penalty Category	Calculation	Total
<i>For failing to comply with CWC 13376</i>	CWC section 13350(a)(2): 45 days x \$5,000/day	\$225,000
POTENTIAL MAXIMUM ACL		\$225,000

RECOMMENDED CIVIL LIABILITY

22. Pursuant to section 13327 of the California Water Code, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violation(s); susceptibility of the cleanup or abatement of the discharge; the degree of toxicity of the discharge; with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations; the degree of culpability and economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

a. Nature, circumstances, extent, and gravity of the violations:

The City's improper management practices during the Solstice Canyon Creek Bridge construction project lead to the pollution and degradation of water quality in Solstice Canyon Creek and consequently the Pacific Ocean. The discharges were not a result of natural phenomenon of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight by not putting the spoil piles into the creek bed.

b. Susceptibility of the cleanup or abatement of the discharge:

On March 11, 2008, Regional Board staff contacted the City of Malibu's representatives and requested the removal of the spoil piles. In compliance with the request, the spoil piles were removed. Following the removal of the spoil piles, the City implemented the required BMPs at the site until the end of the project. Therefore, a reduction from the maximum civil liability is warranted.

c. Degree of toxicity of the discharge:

Impacts of the project include increased turbid waters, total suspended solids and the negative impact on water quality downstream. Therefore, a reduction from the maximum civil liability is not warranted.

d. The ability of the Permittee to pay:

The City has not submitted sufficient information for the Regional Board to determine the City's ability to pay the maximum civil liability. It is assumed, however, that the maximum liability of \$225,000 is not in excess of the financial resources available to the Permittee. Therefore, a reduction from the maximum civil liability is not warranted.

e. The effect on the Permittee's ability to continue its business:

The City has not submitted sufficient information for the Regional Board to determine the City's ability to continue its business. It is assumed however that as a public entity, maximum liability of \$225,000 will not have an effect on the City's ability to continue its business.

f. Any voluntary cleanup efforts undertaken:

In addition to the City's full compliance with the Regional Board request, the City implemented remediation and mitigation measures to rectify the effects the Project had on the stream channel. Therefore, a reduction from the maximum civil liability is warranted.

g. Prior history of violations:

The City does not have a history of prior violations of this nature; therefore, a reduction of the maximum civil liability is warranted.

h. Degree of culpability:

The discharge alleged in this Complaint was avoidable and resulted from mismanagement and/or lack of supervision of the City's project contractor. The City also failed to oversee or implement the requirements prescribed in their 401 Certification permit. Therefore, a reduction of the maximum civil liability is not warranted.

i. Economic benefit or savings:

Economic benefit or savings as a result of the illegal discharge is unknown.

j. Other matters as justice may require:

An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this complaint and related documents. The Regional Board charges at a rate of \$125 per hour for staff cost recovery. With total staff time at approximately 59 hours, staff costs incurred by the Regional Board are estimated at \$7,375.

23. After consideration of the factors in section 13327 of the California Water Code, the Chief Deputy Executive Officer recommends that administrative civil liability be imposed on the Permittee by the Regional Board in the amount of \$52,375 which includes the following:

- a. An assessment of \$45,000 for the violation of at least 45 days starting from the completion date of the diversion installation from January 25, 2008 through the removal of the spoil piles on March 10, 2008.
- b. Reimbursement of \$7,375 in Regional Board staff costs (59 hours x \$125/hour).

RECOMMENDED CIVIL LIABILITY

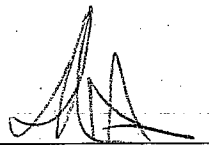
Penalty Category	Calculation	Total
<i>For failing to comply with CWC 13376</i>	CWC section 13350(a)(2): 45 days x \$1,000/day	\$45,000
<i>Reimbursement for Staff Costs</i>	59 hours x \$125/day	\$7,375
TOTAL RECOMMENDED PENALTY		\$52,375

24. If the Permittee elects to pay the recommended civil liability, the administrative civil liability is due and payable and must be received by the Regional Board by the close of business on September 23, 2008.
25. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this complaint and return the executed waiver form to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013 to be received by the Regional Board by the close of business on September 23, 2008. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$52,375 (payable to the State Water Resources Control Board Waste Discharge Permit Fund) shall accompany the signed waiver.
26. Unless waived, a hearing before the Regional Board or Regional Board Hearing Panel (Hearing Panel) will be held within 90 days after service of this Complaint pursuant to California Water Code sections 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0041 and return it to the Regional Board by. If we do not receive the waiver and payment of the penalty by September 23, 2008, the matter will be heard before the Regional Board or Hearing Panel.
27. The Permittee and/or the Permittee's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time, and location of the hearing will be mailed to the Permittee not less than ten (10) days prior to the hearing date. The Regional Board or a Regional Board Hearing Panel may assess a penalty higher than the recommended civil liability in this Revised Complaint.

28. The Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial liability in a greater amount.
29. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations contained in the California Code of Civil Procedure that refers to "actions" and "special proceedings" apply to judicial proceedings, not administrative proceedings. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)
30. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
31. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.



Deborah J. Smith
Chief Deputy Executive Officer

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this waiver, I hereby waive the right of the City of Malibu to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2008-0041 issued by the Chief Deputy Executive Officer. The City of Malibu understands that this waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

The City of Malibu elects to pay the civil liability to the State Water Resources Control Board Cleanup and Abatement Account. Enclosed herewith in full payment of the civil liability is a \$52,375 check payable to "State Water Resources Control Board Waste Discharge Permit Fund."

The City of Malibu understands that this waiver gives up the rights to argue against the allegations made by the Chief of the Compliance and Enforcement Section in this Complaint and against imposition of, and the amount of, civil liability imposed. The City of Malibu also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind the City of Malibu in the making and giving of this waiver.

The City of Malibu

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Title: _____

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2008-0041

NOTICE OF PUBLIC HEARING

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

<u>DISCHARGER</u>	<u>DISCHARGE LOCATION</u>	<u>RECEIVING WATERS</u>
City of Malibu Solstice Canyon Creek Project	26023 Pacific Coast Highway Malibu, California	Solstice Canyon Creek

Administrative Civil Liability Complaint ("ACLC") No. R4-2008-0041 alleges that the City of Malibu (Permittee) has violated waste discharge requirements contained in State Water Board Order No. 2003-0017-DWQ and the Federal Clean Water Act Section 401 by failing to implement all terms and conditions prescribed in its Clean Water Act section 401 Certification during the period January 25, 2008 through March 10, 2008. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$52,375 be assessed against the City of Malibu for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: November 18, 2008
Time: 10:00 A.M.
Place: 320 W. 4th Street, 6th Floor
Los Angeles, CA 90013

II. AVAILABILITY OF DOCUMENTS

The ACLC, related documents, proposed order, comments received, and other information about the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing. However, the entire file might not be available at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Prosecution Team during business hours, not later than October 29, 2008. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to part 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. The City of Malibu
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below no later than October 6, 2008. The request shall include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the party or parties designated above do not adequately represent the person's interest. The requesting party

will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

V. COMMUNICATIONS WITH THE PROSECUTION TEAM

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mercedes Merino. Jeffery Ogata, Senior Staff Counsel for the Regional Board, will advise the Prosecution Team prior to and at the panel hearing. Mr. Ogata is currently advising the Regional Board in other unrelated matters, but neither Mr. Ogata nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Mercedes Merino
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
(213) 620-6369
mmerino@waterboards.ca.gov

VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE

A. Submittals By Parties.

Not later than September 29, 2008, the prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

The City of Malibu and other designated parties are required to submit:

- 1) Any additional documents or evidence the Party/ies want(s) the Hearing Panel to consider,
- 2) A summary of any testimony the Party/ies intend(s) to present, and
- 3) A statement regarding how much time the Party/ies need(s) to present the case to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties no later than close of business on October 20, 2008. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than October 7, 2008.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received no later September 23, 2008. If possible, please submit written comments in Word format electronically to mmerino@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager not later than October 20, 2008 to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Executive Officer Tracy Egoscue, and a Legal Advisor, Michael Levy, Senior Staff Counsel for the Regional Board. While Ms. Egoscue exercises general oversight over the staff's enforcement activities, neither she nor Mr. Levy have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing no later than October 21, 2008 to the Legal Advisor to the Hearing Panel:

Michael Levy
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 341-5193
mlevy@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by October 21, 2008 if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. APPLICABILITY OF NOTICE

The Executive Officer has directed the use of this standard notice in an order dated March 5, 2008. If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: August 25, 2008